

1 STEPHEN A. SCOTT (SBN 67467)
sscott@hayesscott.com
2 M. COLLEEN RYAN (SBN 258359)
cryan@hayesscott.com
3 HAYES SCOTT BONINO ELLINGSON & McLAY, LLP
203 Redwood Shores Parkway, Suite 480
4 Redwood City, CA 94065
Telephone: 650.637.9100
5 Facsimile: 650.637.8071

6 Attorneys for Defendants
OAKLAND COLISEUM JOINT VENTURE,
7 CITY OF OAKLAND, ALAMEDA COUNTY
and SMG (erroneously sued as SMG CORPORATION)
8

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 PATRICK A. MISSUD, and those similarly
situated,

13 Plaintiff,

14 v.

15 OAKLAND COLISEUM JOINT VENTURE;
16 CITY OF OAKLAND; ALAMEDA
COUNTY; SMG CORPORATION; DOES 1-
17 100; ROE Corporations I-X,

18 Defendants.
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CASE NO. 3:12-cv-02967-JCS

**OAKLAND COLISEUM JOINT
VENTURE, CITY OF OAKLAND,
ALAMEDA COUNTY AND SMG'S
JOINT AND SEVERAL
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
THEIR MOTION TO STRIKE
PUNITIVE DAMAGES**

**Date: December 21, 2012
Time: 9:30 a.m.
Dept.: G – 15th Floor
Judge: Joseph C. Spero**

Complaint filed: June 7, 2012

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**I.
INTRODUCTION**

Defendants Oakland Coliseum Joint Venture (“OCJV”), City of Oakland (“City”), Alameda County (“County”) and SMG [erroneously sued as SMG Corporation] (hereinafter collectively referred to as “defendants”) move to strike portions of the Complaint.¹ Specifically, defendants move to strike those portions regarding: (1) prayer for punitive damages, (2) *in propria persona* Missud’s prayer for attorney’s fees, (3) class action lawsuit and representative Missud acting as attorney for the alleged class and (4) web addresses listed in the Complaint.

**II.
ALLEGED FACTS**

This action is brought by plaintiff Patrick A. Missud, an attorney representing himself and a purported class. Plaintiff alleges that a U-2 concert was re-scheduled for June 2, 2011. (Complaint at p.8:14-16.) Plaintiff alleges that the U-2 concert was sold-out. (Complaint at p.8:17-19.) Plaintiff alleges that defendants were to provide plaintiffs “with certain benefits or facilities which are ancillary to the Venue.” (Complaint at 8:26-27.) Plaintiff alleges that in addition to providing access to the Venue, “Defendants were also to provide security; safe premise free of dangerous conditions; sanitary facilities; light; ventilation; water; safety evacuation plans; ADA ramps, walks, and elevators; on-site emergency services; and parking to name a few ancillary benefits, services, and facilities which are typically required when publically hosting 69,000 paying Invitees.” (Complaint at 8:28-9:4.)

The Complaint names four defendants, Oakland Coliseum Joint Venture, City of Oakland, Alameda County, and SMG Corporation. Nine causes of action are pled and plaintiff alleges the following violations: (1) Clean Water Act; (2) Resource Conservations and Reclamation Act; (3) Americans with Disabilities Act; (4) National Highway Safety and Traffic Act; (5) Cal-Trans Violations; (6) Negligence; (7) Breach of Contract; (8) Fraudulent Inducement; and (9) Business and Professions Code section 17200 [Deceptive Trade Practices]. (Complaint at 9:6-11:9.) Plaintiff lumps all defendants together in the generic allegations made in the complaint.

¹ This motion is filed concurrently with defendants’ Motion to Dismiss the Complaint.

1 The Complaint does not allege facts demonstrating fraud, oppression or malice as required
 2 to pursue punitive damages under California Civil Code section 3294. Instead plaintiff alleges that
 3 “Defendants willfully violated” various federal statutes. (Complaint at 9:11-26; 10:2-5.) Plaintiff
 4 also alleges “Defendants knowingly oversold the Concert . . . Plaintiffs were fraudulently induced
 5 into buying Licenses which these Defendants knew would not be honored.” (Complaint at 10:23-
 6 26.) Finally, Plaintiff alleges “Defendants “advertised the Concert in a way which misled the
 7 Plaintiffs-Invitees to believe their Licenses, once bought, would be honored at the Venue for the
 8 Concert” because “Defendant engaged in fraudulent acts by selling more Licenses for the Concert at
 9 the Venue that they were capable of accommodating.” (Complaint at 11:3-7.) No allegations are
 10 made as to the contents of defendants’ advertising or what occurred that caused plaintiff to believe
 11 his ticket was not honored.

12 Plaintiff relies upon a Wikipedia link as authority for his standing to bring suit, “Citizen
 13 suits can be filed to enforce provisions of the Federal Acts listed in the caption and petition the
 14 courts to impose injunctions, fees etc., for violations of said Acts.
 15 http://en.wikipedia.org/wiki/Citizen_suit ” (Complaint at 4:26-28.) The Complaint also relies upon
 16 the following web addresses to make unknown additional vague, ambiguous and unintelligible
 17 allegations:

18 <http://www.oaklandfiasco.com> [website appears to be created by Missud]

19 <http://dustinkeirstead.blogspot.com/2011/06/u2-traffic-nightmare-masses-speak-part.html>

20 <http://maps.google.com>

21 http://en.wikipedia.org/wiki/Clean_Water_Act#cite_note-7

22 http://www.waterfrontaction.org/dd/archive/dd_council_report_2-8-05.pdf

23 http://www.smgworld.com/operations_development.aspx

24 <http://pressdemocrat.com/article/20100713/ENTERTAINMENT/100719890>

25 <http://www.coliseum.com/events/sports.php>

26 http://en.wikipedia.org/wiki/TRaffic_safety#Designing_for_pedestrians_and_cyclists

27 (Complaint at p. 3:15-16, 19-20; p.4:28; p.5:10-11; p.6:15, 24; p.7:19,22; p.8:20, 25 and p.12:6.)

28 The Complaint alleges that “class action plaintiffs [Class] are represented by Missud who

1 also happens to be the attorney of record for this case.” (Complaint at 2:19-20.) The prayer for
 2 relief includes “Attorneys’ fees, costs, and any and all other related fees for this suit.” (Complaint
 3 at 13:14.)

4 **III.**
 5 **A MOTION TO STRIKE SHOULD BE GRANTED**

6 **A. The Court Has the Authority to Strike The Improper Prayer for Punitive**
 7 **Damages, References to Web Addresses, and References to Class Action**

8 The court has the authority to strike improper provisions of a pleading. Federal Rule of
 9 Civil Procedure, Rule 12(f) provides:

10 **Motion to Strike.** The court may strike from a pleading an
 11 insufficient defense or any redundant, immaterial, impertinent, or
 12 scandalous matter. The court may act:

13 (1) on its own; or

14 (2) on motion made by a party either before responding to the pleading
 15 or, if a response is not allowed, within 21 days after being served with
 16 the pleading.

17 Motions to strike may be granted if “it is clear that the matter to be stricken could have no
 18 possible bearing on the litigation. (*Wilkerson v. Butler*, 229 F.R.D. 166, 170 (E.D. Cal. 2005).)
 19 The function of a 12(f) motion is to avoid the expenditure of time and money on litigating spurious
 20 issues prior to trial. [Internal citation omitted.] (*Id.*) A “redundant” matter consists of allegations
 21 that constitute a needless repetition of allegations foreign to the issue to be denied. (*Id.*) An
 22 “immaterial” matter has no essential or important relationship to the claim for relief pleaded. (*Id.*)
 23 A statement of unnecessary particulars in connection with and descriptive of a material matter may
 24 be stricken as immaterial. An “impertinent” allegation is not relevant to the issues involved in the
 25 action and could not be given into evidence.

26 The moving party must generally make two showings: (1) the challenged allegations are
 27 clearly unrelated to the pleader’s claims, and (2) the moving party would be prejudiced by allowing
 28 the allegations to stay in the pleading. (*In re UTStarcom, Inc. Securities Litigation*, 617 F.Supp.2d
 964, 969 (N.D. Cal. 2009).) Prejudice exists when the contested allegation would confuse the
 issues, or by its length and complexity, would place an undue burden on the responding party, inject

1 the possibility of unnecessarily extensive and burdensome discovery, improperly increase the time,
 2 expense and complexity of trial, or otherwise unduly burden the moving party. (*See Hart v. Baca*,
 3 204 F.R.D. 456, 457 (C.D.Cal. 2001).)

4 Courts may use Rule 12(f) to strike prayers for relief where the damages or other relief
 5 sought are no recoverable as a matter of law. (*See Spencer v. DHI Mortgage Co.*, 642 F.Supp.2d
 6 1153, 1169 (E.D. Cal. 2009).)

7 Here, striking references to and the prayer for punitive damages is warranted because the
 8 Complaint is void of allegations that could support a claim for punitive damages. In addition, all
 9 references to “class action,” “class action plaintiffs” and “Class” should be stricken because the
 10 unsuitability of class treatment is evident from the face of the Complaint. Additionally, Missud
 11 cannot be a class representative while also serving as attorney for the class. Finally, the inclusion of
 12 web addresses in the Complaint is improper and adds extensive irrelevant information. As such,
 13 this Court should strike portions of Missud’s Complaint as set forth in the conclusion.

14 **B. Plaintiff Fails to Plead Ultimate Facts To Support His Claim For Punitive**
 15 **Damages**

16 Punitive damages are available only when “the defendant has been guilty of oppression,
 17 fraud, or malice.” (California Civil Code § 3294(a).) The statute goes on to explain that plaintiff
 18 must plead and prove facts and circumstances which would give rise to punitive damages:

19 (c)(1) Malice means conduct which is intended by the defendant to cause
 20 injury to the plaintiff or despicable conduct which is carried on by the
 21 defendant with a willful and conscious disregard for the rights or safety of
 22 others.

23 (c)(2) Oppression means despicable conduct that subjects a person to cruel
 24 and unjust hardship in conscious disregard of that person’s rights.

25 (c)(3) Fraud means an intentional misrepresentation, deceit, or
 26 concealment of a material fact known to the defendant with the intention
 27 on the part of the defendant of thereby depriving a person of property or
 28 legal rights or otherwise causing injury. (California Civil Code § 3294.)

In order to support a claim for punitive damages, a complaint must allege ultimate facts of
 the defendant’s oppression, fraud, or malice. A claim for punitive damages cannot be pled
 generally. (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872 [allegations that defendant acted

with “oppression, fraud and malice toward plaintiff are merely conclusory allegations”].) Punitive damages are not available unless the defendant acted in a highly malicious, intentional, and deliberate manner. (*American Airlines, Inc. v. Sheppard. Mullin, Richter & Hampton* (2002) 96 Cal. App. 4th 1017, 1050-51.) There is no separate cause of action for punitive damages, “they are only ancillary to a valid cause of action.” (*Caira v. Offner* (2005) 126 Cal.App.4th 12, 39.)

While courts are increasingly liberal with what constitutes fact pleading on a claim for punitive damages, here, the Complaint does not allege any facts which demonstrate that any defendant acted with malice, oppression or fraud. At best, plaintiff makes conclusory allegations that defendants “willfully violated” the Clean Water Act, Resource Conservation and Recovery Act, American with Disabilities Act, National Highway and Motor Vehicle Safety Act, and Cal-Trans Violations. (Complaint at 9:9:9-10:5.) As set forth in the accompanying motion to dismiss, Missud completely fails to plead each and every one of his claims with the requisite factual allegations and, as such, the prayer for punitive damages must be stricken.

Plaintiff’s punitive damages claim necessarily fails because it is ancillary to his deficient claims and fails to make the requisite factual allegations under Civil Code § 3284. Accordingly, the Court should strike the language as identified in the Conclusion below.

C. The Complaint Fails to Demonstrate that a Class Action Could Be Maintained on the Facts Alleged

Where the complaint demonstrates that a class action cannot be maintained on the facts alleged, a defendant may move to strike class allegations. (*See Sanders v. Apple Inc.*, 672 F.Supp.2d 978, 989-990 (N.D. Cal. 2009).)

To bring a class action, a plaintiff must satisfy Federal Rules of Civil Procedure, Rule 23(a) and (b). Under Rule 23(a), a plaintiff must show that: (1) the class is so numerous that joinder of all member is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties will fairly and adequately protect the interests of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. In addition, Rule 23(b) must be satisfied by showing the prosecuting separate actions by individuals is superior to individual actions for one of a few of reasons, such as a class action being a superior

1 method of adjudication because questions of law or fact predominate over class members.

2 Here, the Complaint fails to allege who would be members of the class and upon what basis
3 a purported class could be found. Instead, the Complaint alleges the following:

4 “The class action plaintiffs [Class] are represented by Missud who
5 also happens to be the attorney of record for this case. The Class size
6 ranges from several hundred to several thousand ordinary, average-
7 income American citizens. They have no special interest aside from
8 their love of music. Most class members live in cities throughout the
9 Bay Area . . . Others of the class come from out of state . . . Individual
10 members of the Class do not have the financial resources to separately
11 petition their grievances . . .” (Complaint at 2:19-26.)

12 Even if Missud were able to coherently allege a class of plaintiffs, individual issues would
13 predominate among a class of U-2 concert attendees. The Court would be forced to engage in
14 individual inquiries of each class member with respect to how, where, and when they purchased
15 their concert tickets, whether any of them saw the websites Missud lists in the Complaint, and what
16 caused each member to purchase the concert tickets. A further example is reliance as a necessary
17 element for fraud in the inducement, which would require all of the specific facts surrounding each
18 individuals’ decision to purchase the concert ticket. As a matter of law, a fraud action cannot be
19 certified when individual reliance is an issue. (*Castano v. American Tobacco Co.*, 84 F.3d 734, 745
20 (5th Cir. 1996); *see also Martin v. Dahlberg, Inc.*, 156 F.R.D. 207 (C.D. Cal. 1994).) In light of the
21 foregoing a class action is not the “superior” method for adjudication of rights, nor is there a
22 predominance of common questions of fact or law. As such, the Court should strike all allegations
23 relating to the “class”, as described in the Conclusion, without leave to amend.

24 **D. Missud Cannot Be a Class Representative and Class Counsel**

25 A conflict of interest prohibits a lawyer from serving both as class representative and as
26 counsel for the class. (*See Best Buy Stores, L.P. v. Sup. Ct. (Boling)*, 137 Cal.App.4th 772, 774
27 (2006); *Apple Computer, Inc. v. Superior Court*, 126 Cal.App.4th 1253 (2005).)

28 Here, Missud cannot serve as both a class representative and as counsel for the class. As
such, all portions of the Complaint referring to Missud as counsel for the class should be stricken as
outlined in the Conclusion.

///
///

E. Use of Web Address in the Complaint Is Improper

Federal Rules of Evidence, Rule 201 provides that “judicial notice of an adjudicative fact” may be taken is a “fact is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned.”

Here, the Complaint incorrectly includes allegations entitled “Judicial Notice of Web Based Information.” (Complaint at 4:10-23.) Notably, Missud fails to allege what content from these websites—one of which Missud himself created—is material to the litigation. No allegations are made as to how any of the web addresses listed in the Complaint support plaintiff’s allegations against defendants. Further, the unnecessary and generic use of web addresses creates confusion, is immaterial, impertinent, and redundant to the extent that Missud makes similar allegations elsewhere in the Complaint.

None of the web addresses are authenticated or constitute undisputed facts. Defendants dispute that reliability, authenticity and admissibility of each and every one of the web addresses and their contents. The web addresses used in the Complaint are not “generally known within the trial court’s jurisdictional territory.” The information contained within the web sites cannot be “accurately and readily determined” and comes from “sources whose accuracy” is expressly questioned. As such, each and every web address set forth in the Conclusion should be stricken from the Complaint.

**IV.
CONCLUSION**

Based on the foregoing, defendants respectfully submit that the Court strike the following portions of the Complaint:

1. Page 1:10: “CLASS ACTION.”
2. Page 2:1-2: “with the class action Plaintiffs.”
3. Page 2:20-26:

“The class action plaintiffs [Class] are represented by Missud who also happens to be the attorney of record for this case. The Class size ranges from several hundred to several thousand

1 ordinary, average-income American citizens. They have no special interests apart from their love of
 2 music. Most Class members live in cities throughout the Bay Area including Gilroy, Napa and
 3 Sacramento. Others of the Class came from out of state to attend the much anticipated and historic
 4 Concert. Individual members of the Class do not have the financial resources to separately petition
 5 their grievances which is the reason why this case is filed as a class action.”

6 4. Page 3:12-20:

7 “In their very own words:

8 ‘From space utilization to HVAC to security systems and in every discipline necessary,
 9 SMG will have an expert in the field available to you This involves reviewing/forecasting all
 10 events projections including attendance, ticket/rent revenues, . . . all staffing assumptions. . . .’

11 http://www.smgworld.com/operations_developments.aspx; and

12 ‘Our successful growth has been built on the many partnerships, relationships, and resources
 13 we have developed with our clients—both municipal and private. This unique combination of
 14 resources, relationships, and expertise has allowed SMG to define and refine the industry
 15 throughout its history. Our ownership and team of dedicated corporate support personnel make us
 16 unrivalled in the field of private facility management.’

17 http://www.smgworld.com/company_history.aspx”

18 5. Page 3:22: “Pro-se attorney and class action representative”

19 6. Page 4:10-23:

20 “VII. JUDICIAL NOTICE OF WEB BASED INFORMATION

21 Federal Courts throughout the nation and even those applying California law within
 22 California’s Northern District have deemed that web based information is reliable. *Austin v.*
 23 *American Association of Neurological Surgeons*, 253 F.3d 967, 7th Cir. 2001, (citing several
 24 websites and noting that “there is an abundance of up-to-date literature easily retrievable from the
 25 World Wide Web.); , 253 F.3d 967, 7th Cir. 2001, (citing several websites and noting that “there is
 26 an abundance of up-to-date literature easily retrievable from the World Wide Web.); *Grimes v.*
 27 *Navigant Consulting, Inc.*, 185 Supp. 2d 906, 913 and note 7; N.D. Ill. 2002, (taking judicial notice
 28 of information published on the internet and observing that “in other contexts, the Seventh Circuit

has approved of taking judicial notice of reliable information published on the internet [citations.]); *Modesto Irrigation District v. Pacific Gas and Electric Co.*, 61 F.Supp. 2d, 1058, 1066, N.D. Cal. 1999, (taking judicial notice of information where it ‘is readily accessible through the internet.’) The following paragraphs may include embedded hypertext links which incorporate by reference reliable web-based, internet information, publications and literature. Said links supplement and corroborate the following allegations, and are incorporated herein.”

7. Page 4:25: “AND CLASS ACTIONS STATUS”

8. Page 4:28: “http://en.wikipedia.org/wiki/Citizen_suit”

9. Page 5:4-26:

“At least several hundred class action Plaintiffs were similarly damaged.

B. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in FRCP 23 and CCP§382 et seq., in that:

(a) The persons who comprise the Class are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court. The class is expected to exceed 400 Plaintiffs: <http://www.oaklandfiasco.com/> and <http://dustinkeirstead.blogspot.com/2011/06/u2-traffic-nightmare-masses-speak-part.html>;

(b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the Class and will apply uniformly to every member of the Class. The common questions of fact and law which predominate in this class action non-exhaustively include:

1. Where the Venue’s Facilities are illegally used by the Defendants in violation of the Clean Water Act [CWA];

2. Whether the recently tax-payer restored and reclaimed Oakland Estuary, a federally protected public wetland, is being polluted by Defendants’ neighboring private and lucrative financial enterprise which includes parking greasy, leaking cars in the ‘overflow parking lot’ during Defendants’ many events;

3. Whether these Defendants’ immediately adjoining “overflow parking lot” is a “point source emitter” as defined by the EPA’s National Pollutant Discharge Elimination System;

1 4. Whether these Defendants' immediately adjacent "overflow parking lot"
2 creates wastewater as per the EPA's definition of industrial site drainage which includes silt, sand,
3 alkali, oil, and chemical residues;

4 10. Page 6: 1-26:

5 "5. Whether these Defendants shall install a separate storm drain/runoff system
6 to protect the immediately adjacent, federally protected wetlands, from the chemical residues which
7 are leaching into the groundwater immediately under their "overflow parking lot;"

8 6. Whether the groundwater is in fact being contaminated by various alkali
9 compounds, antifreeze, and motor and transmission oils, and if this in turn invokes provisions of the
10 Reclamation and Conservation of Resources Act ([RCRA];

11 7. Whether these for-profit Defendants' improper use of their "overflow parking
12 lot," which has already created industrial-type point-source pollution, will not require that they
13 sponsor an environmental impact report to document the ongoing damage to the public's Oakland
14 Estuary;

15 8. Whether the 15-foot deep, 25 square yard wetland protected by state and
16 federal authorities for the expensive Oakland Estuary restoration project, and existing within the
17 boundaries of these Defendants' "overflow parking lot," located just fifty feet from the Oakland
18 Street and Zhong Way Intersection, and situated just fifty feet from the elaborate pedestrian rest
19 area constructed at the end of Zhong Way, is also being polluted by the parked cars and trash
20 discarded by the Defendants' unsupervised Invitees: [<http://google.com/> and enter <oakport st. &
21 zhong way Oakland 94621>; use the 'street view' function and scroll right to the palm tree];

22 9. Whether these Defendants are required to provide trash receptacles, and
23 service the same, to manage the solid wastes known to be discarded at and around their "overflow
24 parking lot" and within the 25 square yard state and federally protected wetland;

25 10. Whether Section 209 fines should be imposed in these Defendants for each
26 day of violation, starting from the day they knew of their CWA violations since June 16, 2011;

27 11. Whether the Section 309 fines should be set at the minimum \$2,500 for the
28 first day of willful violation, or increased to \$25,000/day for the continued brazen violation of the

1 California http://en.wikipedia.org/wiki/Clean_Water_Act#cite_note-7;

2 12. Whether the Venue's Facilities, which are open to the public and offered for
3 use by the City of Oakland and County of Alameda, violate the American with Disabilities Act
4 [ADA];"

5 11. Page 7:1-27:

6 "13. Whether the Defendants are to provide state and federally mandated ADA
7 access, or other amenities such as lighting and bathrooms, appurtenant to its 'overflow parking lot'
8 and/or any other Facilities used by consumer Invitees;

9 14. Whether these Defendants must provide minimally required walkways,
10 ramps, transitions and safety systems at and around their 'overflow parking lot' which is used by
11 their sometimes aged or otherwise disabled consumer-Invitees;

12 15. Whether the Venue's Facilities violate the National Highway Safety and
13 Transportation Act [NHSTA];

14 16. Whether the Defendants are to provide safety separation between pedestrians
15 and vehicular traffic per the NHSTA and state CALTRANS laws;

16 17. Whether the Defendants are to lawfully provide security lighting to identify
17 the many public hazards such as rusted barbed wire surrounding the perimeter of their 'overflow
18 parking lot,' potholes and ruts found throughout their 'overflow parking lot,' and piles of discarded
19 debris found within and around their 'overflow parking lot;'

20 18. Whether the Defendants, among which include Pennsylvania's SMG
21 Corporation, should be allowed to rap financial windfalls from California consumers, all the while
22 polluting California tax-payer funded reclamation projects like the Oakland Estuary for which a
23 substantial portion of \$198 million in bonds were raised by the Oakland Trust for Clean Water and
24 Safe Parks per measure DD in 2005:

25 http://www.waterfrontaction.org/dd/archive/dd_council_report_2-9-05.pdf;

26 19. Whether the Defendants breached their contract with the Plaintiffs, and third
27 party beneficiaries, by not providing the professional services that they admit to providing per their
28 own website http://www.smgworld.com/operations_development.aspx;

20. Whether the Defendants breached their contract with the Plaintiffs, who bought licenses to use the Venue and its amenities, by not making the proper staffing assumptions or providing the minimum required staff to manage the Concert which was planned for two years;

21. Whether the Class action Plaintiffs get their money back for the Defendants' breach of contract"

12. Page 8:1-11:

"(c) The representative Plaintiff's claims are typical of the claims of each member of the Class. Plaintiff Missud, only one of many consumer-Invitees, is acting as the class action representative [Plaintiffs]. In this case, Plaintiffs purchased one or more tickets/Licenses to enter the Venue on the evening of June 7, 2011. Without legal justification, the Plaintiffs were denied access to the Venue with at least one of said Licenses. The Plaintiffs properly planned their evenings allowing ample time to access the Venue.

(d) The representative Plaintiffs will fairly and adequately represent and protect the interest of the Class, and will retain additional counsel which is competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative Plaintiffs and the members of the Class that would make class certification inappropriate. Counsel for the Class will vigorously assert the claims for all Class Members."

13. Page 8:20:

["http://www.pressdemocrat.com/article/20100713/ENTERTAINMENT/100719890."](http://www.pressdemocrat.com/article/20100713/ENTERTAINMENT/100719890)

14. Page 8:25:

["http://www.coliseum.com/events/sports.php"](http://www.coliseum.com/events/sports.php)

15. Page 12:6:

["http://en.wikipedia.org/wiki/Traffic_safety#Designing_for_pedestrians_and_cyclists"](http://en.wikipedia.org/wiki/Traffic_safety#Designing_for_pedestrians_and_cyclists)

16. Page 13:8-14:

"10. That the Defendants pay punitive damages in an amount sufficient to deter them from misrepresenting the capacity of the Venue, fraudulently inducing License sales, and/or overselling seat Licenses as has been their pattern and practice over the years.

11. That the Defendants pay punitive damages in an amount sufficient to deter

1 them from conducting fraudulent business acts or practices which are unfair, deceptive, untrue, or
2 misleading per Business and Professions Code section 17200 Deceptive Trade Practices code.

3 12. Attorneys' fees, costs, and any and all other related fees for this suit."

4 Dated: November 2, 2012

HAYES SCOTT BONINO ELLINGSON & MCLAY, LLP

5
6 By: /s/ M. Colleen Ryan

7 STEPHEN A. SCOTT

8 M. COLLEEN RYAN

9 Attorneys for Defendants

10 OAKLAND COLISEUM JOINT VENTURE,
11 CITY OF OAKLAND, ALAMEDA COUNTY
12 and SMG
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